

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MONSANTO COMPANY and
MONSANTO TECHNOLOGY LLC,

Plaintiffs,

v.

E.I. DU PONT DE NEMOURS AND CO. and
PIONEER HI-BRED INTERNATIONAL, INC.,

Defendants.

Case No. 09-cv-0686 (ERW)

EXHIBIT A

**September 2, 2010 Transcript from Markman Hearing (Vol. I-A)
Page 25, Lines 5-11**

**REPLY MEMORANDUM OF LAW IN SUPPORT OF DUPONT'S MOTION TO
BIFURCATE AND STAY DISCOVERY WITH RESPECT TO
WILLFUL INFRINGEMENT PURSUANT TO FED. R. CIV. P. 42(b)**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MONSANTO COMPANY, et al.,)
)
 Plaintiffs,)
)
 vs.) No. 4:09-CV-00686 (ERW)
)
 E.I. DUPONT DE NEMOURS & COMPANY,)
 et al.,)
)
 Defendants.)

MARKMAN HEARING
BEFORE THE HONORABLE E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE

SEPTEMBER 2, 2010

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1 there and make the terms more complicated and actually change
2 the nature of the invention we're talking about here through
3 their use of additional terms. And so I'll be pointing that
4 out as we go through.

5 Also, it's the case that Defendants have used an
6 extraordinary -- in my experience, an extraordinary amount of
7 extrinsic evidence here, and we'll talk about that. I think
8 the extrinsic evidence is not relevant as a general rule, but
9 the snippets that they use typically, I think, are not
10 accurately cited and don't support the points. So we'll talk
11 about that as we go through the constructions.

12 But the first construction is Claim 1. This, again,
13 is our broadest claim. "An isolated DNA molecule which
14 encodes an EPSPS enzyme having the sequence of Sequence ID No.
15 3."

16 So this is going directly to that DNA that Monsanto
17 discovered, and there's no limitation on where that DNA is; no
18 limitation on how that DNA is used. It's just if you have
19 that isolated DNA molecule that has this particular -- the
20 code for this particular amino acid in it, then you've got --
21 you've got the claim. You're within the claim. And so what
22 I've done here, Your Honor, is I put the various -- the claim
23 phrase of our construction and Defendants' construction all up
24 on one chart. So I'll talk first about the word "isolated"
25 which is in dispute here.